IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO 22 OF 2005

IN

WRIT PETITION NO. 1440 OF 2000

NAWAL SINGH ... PETITIONER.

VS.

NATIONAL TEXTILE CORPORATION

(MN) LTD. AND ORS. ... RESPONDENTS.

MS. N.D.BUCH I/B. B.B.DHOLAKIA FOR THE PETITIONER.

MR. MANOJ DALVI I/B. BANATWALA & CO. FOR RESPONDENT NOS. 1 AND 2.

Coram : S.K.Shah, J.

Date : September 9, 2005.

P.C.:

1. The Petitioner filed this Contempt Petition alleging that the Respondents are not implementing the consent terms, arrived at between the parties on 16.10.2003.

2. The terms of the consent terms mentioned as under :-

1) The Respondent No. 2 hereby agrees and undertake not to give effect in any manner whatsoever to letter dated 22nd March, 2000 (being Exhibit ’E’ to the Writ Petition) issued by Respondent No.4. (Exhibit ’E’ to the

petition was the letter issued by the Authority, whereby the Order of reduction in the Grade and fresh appointment of the Petitioner, with effect from 23.4.1996 in the lower grade in place of dismissal was withdrawn and the Order of dismissal was to be enforced.)

2) The Respondent No.2 hereby agrees and undertakes to maintain the reduction of the penalty of 'dismissal' to a reduction to a lower grade and post.

3. It has to be noted that the Order of dismissal of the Petitioner was passed on 19th October, 1994. He had preferred an Appeal against that Order of dismissal on 21.4.1995. The Appeal was also dismissed. Thereafter, a Mercy Petition was filed on 4.10.1995. In the Mercy Petition, the Petitioner had filed an undertaking, dated 12th April, 1996, whereby the Petitioner undertook " not to claim any arrears of salaries and/or any benefits for the period from October 94 to May, 1996". As a result of this undertaking, he was given a fresh appointment in the lower grade as a Manager with effect from 23.4.1996. At that time the pay of the Petitioner was fixed in the scale of Rs. 3700/- to 5000/-. Since then he was working as Manager with the Respondent No. 1 for about four years. (At the time of dismissal, he was working as a General Manager and as a result of the reduction in the rank, he was appointed afresh as a Manager)

4. However, thereafter, the Higher Authorities, issued a letter dated 22nd March, 2000 (Exhibit 'E' referred to above), whereby the decision to appoint him in lower grade, in view of the undertaking in place of dismissal was withdrawn and the Petitioner was communicated that he was dismissed. It is this action that was challenged in the Writ Petition.

5. It appears that on 23/24th June, 2003, the Board of the Subsidiary in its 183rd meeting, held on 24.6.2003, where the Petitioner was given personal hearing. In that meeting, the decision was taken to maintain the reduction in penalty of 'dismissal' to a penalty of "reduction to a lower grade and rank of post" in respect of the petitioner.

6. The Board also took a final decision, which reads thus:-

> 2. In terms of decision of the Board and directions of the Ministry of Textiles, we are issuing necessary orders based on following:-
>
> > a) Shri Nawal Singh's pay will be fixed in pay scale of Rs. 4100-5300 (4th HPCC), which is one grade lower than the pay scale of Rs.4500-5700 (4th HPCC) drawn by him immediately prior to dismissal with effect from 19.10.1994.

b) Shri Nawal Singh will be designated as General Manager (Grade II), which is one post/rank lower than the post/rank of General Manager held by him immediately before his dismissal with effect from 19.10.1994.

c) Shri Nawal Singh will not be paid any arrears of pay pursuant to the aforesaid fixation of pay, till the date of decision by the Board i.e. 24.6.2003.

7. It is, therefore, clear that the Board took a decision to accept the undertaking given by the Petitioner for 'reduction in rank' in place of the 'dismissal' and the same was acted upon by the Board. Having done so, the Board as per Clause (a) above, decided to fix the pay of the Petitioner in the Pay Scale of 4100/- to 5300/-, which is one grade lower than the pay scale of Rs. 4500/- to 5700/- which was the pay drawn by the Petitioner immediately prior to his dismissal. This fixation was done with effect from 9.10.1994.

8. Subsequent to this decision taken in the Board meeting, the consent terms were filed in the Writ Petition on 16.10.2003 and the aforesaid two terms were incorporated in the consent terms.

9. The grievance of the Petitioner is that once his

pay scale in the lower grade was fixed at Rs. 4100/- to 5300/- with effect from 19.10.1994, his New Pay Scale as per the 5th Pay Commission would be equivalent to pay scale of Rs. 4100/- to 5300/- as Rs. 14,300-400-18,300/-. However, his pay in the 5th Pay Commission is fixed at Rs. 12000-375-16500/-, which is equivalent to the said pay scale of Rs. 3700-5000/-.

10. The learned Counsel for the Respondents submits that it was a mistake on the part of the Board to fix the pay scale of 4100 to 5300/-. However, I do not find any merit in these submissions. The Board had consciously taken the decision. It is further pertinent to note that this Scale of Rs. 4100/- to Rs. 5300/- was not before the Board, when it took the decision in 2003. The submission made on behalf of the Respondents that there is a mistake on the part of the Board while fixing the said pay is untenable because this Pay Scale is not in the 5th Pay Commission Scales so that it could be said that the Board had committed mistake when the Board had taken the decision to accept the punishment of reduction to a lower grade and rank in place of dismissal and fixed the pay in the pay scale of Rs. 4100/- to Rs. 5300/- in the Lower Grade. Therefore, his pay scale should be fixed in the 5th pay commission scale, equivalent to the scale of Rs. 4100/- to 5300/-.

11. In view of the above, the Respondents shall fix the Petitioners' Pay as per the pay scale in the 5th Pay Commission, within four weeks from today.

12. The Petition accordingly stands disposed of.

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[S.K.Shah, J.]